REMARKS

In response to the above-identified Office Action, Applicant seeks reconsideration in view of the following remarks. In this Response, Applicant amends claim 1. Applicant does not cancel or add any new claims. Accordingly, claims 1-23 remain pending in the Application.

I.   Claims Rejected Under 35 U.S.C. § 102

Claims 1-23 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2002/0166081 A1 filed by Richardson et al. ("*Richardson*"). Applicant respectfully traverses the rejection.

To anticipate a claim, the cited reference must disclose each and every element of the rejected claim (*see* MPEP § 2131). Claim 1 defines a data-empowered test program architecture stored on a computer readable storage medium comprising the elements of: "a plurality of control files, each control file defining a test sequence for one of a plurality of units-under-test and instructions for executing the test sequence" and "a test executive software module configured to select a test sequence in one of the plurality of control files to use based on a unit-under-test" (emphasis added). Applicant submits that *Richardson* fails to disclose at least these elements of claim 1.

In making the rejection, the Patent Office alleges that the disclosure of: "...test executive is a program...organize test sequences..." in paragraph [0004] of *Richardson* discloses the elements of "a test executive software module configured to select a test sequence to use based on a unit-under-test" (*see* Paper No./Mail Date 20090104, page 3). Applicant respectfully disagrees with the Patent Office's characterization of the disclosure in paragraph [0004] of *Richardson*.

Paragraph [0004] of *Richardson* states, in its entirety:

[0004] A test executive is a program that allows a user to organize and execute sequences (also referred to as test sequence files) of reusable test modules to automatically control a test, such as a test involving one or more instruments or devices or software applications. The test modules often have a standard interface and typically can be created in a variety of programming environments. The test executive software operates as the control center for the automated test system. More specifically, the test executive software allows the user to create, configure, and/or control test sequence execution for various test applications, such as production and manufacturing test applications. Text executive software typically includes various features, such as test sequencing based on pass/fail results, logging of test results, and report generation, among others.

Here, Applicant submits that the section of paragraph [0004] cited by the Patent Office (i.e., the first sentence) provides the definition of a test executive – a program that allows a user to organize and execute sequences and specifically, test sequence files. That is, paragraph [0004] of *Richardson* does not disclose anything more than the general definition of a test executive, which general definition does not include a test executive that is "configured to select a test sequence in one of the plurality of control files to use based on a unit-under-test," only that the test executive can organize and execute test sequence files. Specifically, the disclosure in paragraph [0004] does not mention a test executive configured to **select** anything, let alone a test executive configured to select a test sequence from amongst a plurality of test sequences within control files based on the unit being tested. Therefore, *Richardson* fails to disclose each and every element of claim 1.

The failure of *Richardson* to disclose each and every element of claim 1 is fatal to the anticipation rejection. Therefore, claim 1 is not anticipated by *Richardson*. Accordingly, Applicants respectfully request withdrawal of the rejection of independent claim 1.

Claims 2-5 depend from claim 1 and include all of the elements thereof. Therefore, Applicant submits that claims 2-5 are not anticipated by *Richardson* at least for the same reasons as claim 1, in addition to their own respective features. Accordingly, Applicant respectfully request withdrawal of the rejection of claims 2-5.

Applicant submits that independent claims 6, 11, and 18 each recite elements similar to claim

1 discussed above. Therefore, Applicant submits that claims 6, 11, and 18 are not anticipated by *Richardson* at least for the same reasons as claim 1, in addition to their own respective features. Accordingly, Applicant respectfully request withdrawal of the rejection of independent claims 6, 11, and 18.

Claims 7-10, 12-17, and 19-23 depend from claims 6, 11, and 18, respectively, and include all of the elements thereof. Therefore, Applicant submits that claims 7-10, 12-17, and 19-23 are not anticipated by *Richardson* at least for the same reasons as their respective independent claims, in addition to their own respective features. Accordingly, Applicant respectfully request withdrawal of the rejection of claims 7-10, 12-17, and 19-23.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending are in condition for allowance. A Notice of Allowance is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (480) 385-5060 or jgraff@ifllaw.com.

If necessary, the Commissioner is hereby authorized to charge payment or credit any overpayment to Deposit Account No. 50-2091 for any fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly extension of time fees.

Respectfully submitted,

Date: February 13, 2009   /JASON R. GRAFF, REG. NO. 54134/
                                           Jason R. Graff
                                           Reg. No. 54,134